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11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT

13 CENTRAL DISTRICT OF CALIFORNIA

14 SERENDIP LLC & WENDY CARLOS, ) Case CV08-07739 RGK (RCx)

15 )  
16 Plaintiffs, ) NOTICE OF LODGING  
17 ) OF DOCUMENTS  
18 ) REFERRED TO IN  
19 ) COUNTERCLAIM

vs. )

Defendant. )

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DATE: April 20, 2009  
TIME: 9:00 a.m.  
PLACE: Courtroom 850  
255 E. Temple St.  
Los Angeles, CA

SERENDIP LLC, )

Counter-Defendant. )

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that true copies of the January 25, 1980 Letter  
3  
4 Agreement and the January 25, 1980 Composer Loanout Agreement, referred to in  
5 the Counterclaim, are being lodged with the Court.

6 Dated: February 26, 2009  
7

8 By \_\_\_\_\_ s/ \_\_\_\_\_  
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10 Annemarie Franklin  
11 Attorney for Plaintiff &  
12 Counter-Defendant  
13 Serendip LLC  
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**Letter Agreement**

**Dated January 25, 1980**

 **WARNER BROS.**

Warner Bros. Inc.  
4000 Warner Boulevard  
Burbank, California 91522  
213 843 6000  
Cable Address: Warbros

January 25, 1980

Trans-Electronic Music Productions, Inc.  
133 West 87th Street  
New York, New York 10024

Gentlemen:

Concurrently herewith we are entering into an agreement with you for the services of Wendy Carlos and Rachel Elkind as composers in connection with the motion picture "THE SHINING".

You have heretofore produced a demonstration tape in connection with said motion picture and we have paid you the sum of \$1,000 therefor. One of the compositions in said demonstration tape is now included in the trailer, and it is contemplated that one or more other compositions contained in said demonstration tape may be included in the picture as released. This is to confirm that all musical compositions contained in said demonstration tape shall be deemed included within the music composed by said composers under said agreement being entered into concurrently herewith without any compensation in addition to said sum of \$1,000.

Very truly yours,

PEREGRINE FILMMAATSCHAPPIJ, N.V.

By Rachel Elkind  
Its

AGREED TO:

TRANS-ELECTRONIC MUSIC PRODUCTIONS, INC.

By Rachel Elkind  
Its vics pres.



A Warner Communications Company

**Composer Loanout Agreement**

**Dated January 25, 1980**

Composer Loanout AgreementDated January 25, 1980

Producer PEREGRINE FILMMAATSCHAPPIJ, N.V., a corporation organized under the laws of Netherlands Antilles

Address c/o Mr. Eppo. G. Koopsmans  
Beheermaatschappij Pharas, B.V.  
Joh. Vermeerstr. 7  
Amsterdam, Netherlands

Employer TRANS-ELECTRONIC MUSIC PRODUCTIONS, INC., a corporation

Address 133 West 87th Street  
New York, New York 10024

Composer WENDY CARLOS and RACHEL ELKIND Members of BMI

Address c/o Employer

Citizens of U.S.A. Residents of New York, New York

Publisher WARNER-TAMERLANE PUBLISHING CORP., a Delaware corporation

Picture "THE SHINING"

Starting Date On or about January 25, 1980

Employer hereby loans to Producer the services of Composer to write, compose, arrange, orchestrate and conduct the recording of the musical score of the picture and trailer thereof upon and subject to the terms and conditions hereinafter set forth. Said engagement shall continue from and after the starting date for the period necessary to complete all continuous services required by Producer from the Composer. During said engagement hereunder, Employer agrees that Composer will not render any services for Composer's own account or for others in connection with motion pictures without first obtaining Producer's written consent; that Composer's non-motion picture outside activities shall not interfere with the performance of Composer's services hereunder; and that Composer shall not render any such outside services, which, in Producer's opinion, would prevent the work to be done hereunder from being completed within Producer's schedule with respect thereto.

This agreement shall inure not only to Producer's benefit, but also to the benefit of all persons who may hereafter acquire the right to distribute, exhibit, advertise and/or exploit the picture or any of the results and proceeds of Composer's services hereunder.

The additional terms and conditions attached hereto are hereby incorporated herein by reference.

If this agreement shall be executed by two or more persons, it shall be binding jointly and severally upon said persons and each of them.

By countersigning this agreement, Composer confirms all grants and warranties made by Employer hereunder and agrees to perform the services herein provided for in accordance with the terms hereof.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this agreement as of the date first above written.

PEREGRINE FILMMAATSCHAPPIJ, N.V.

By D. Harker P. H. Addle  
Its

AGREED TO:

TRANS-ELECTRONIC MUSIC PRODUCTIONS

By Wendy Carlos  
Its president

COUNTERSIGNED:

WENDY CARLOS

RACHEL ELKIND

TERMS AND CONDITIONS

1. Compensation: Provided the Employer and the Composer shall faithfully and completely keep and perform each and every covenant and condition of this agreement on their parts to be kept and performed, Producer shall pay to Employer, as compensation for Composer's services hereunder and all rights herein granted and agreed to be granted (except as provided in paragraph 7(c) hereof), the sum of \$35,000.00, payable as follows:

- (a) \$17,500 thereof on commencement of Composer's services; and
- (b) \$17,500 thereof on completion of all services required by Producer of Composer,

Employer hereby authorizes Producer to deduct and withhold from Employer's compensation hereunder the following: ~~(i) 1/8 of all compensation payable to Employer hereunder, which shall be entitled to motion Picture Relief Fund of America if therefor;~~  
~~(ii) any telephone and restaurant charges and other fixed items of a similar nature chargeable to Composer or Employer; (iii) should Producer pay Employer in respect of any period of suspension under the provisions of paragraph 6 hereof, Producer may deduct an equivalent amount from any compensation thereafter accruing hereunder; and (iv) union dues and assessments to the extent permitted by law. All deductions required by law will, of course, be made.~~

Should Composer be required to perform any services hereunder at any place other than New York City, or environs, Producer shall furnish Composer with first-class transportation, to the extent reasonably available, and shall pay all necessary first-class living and traveling expenses, including hotel bills and other charges for board and lodging, reasonably incurred by Composer during the continuance of such services elsewhere.

2. Credit: In the event the musical score of the picture, as released, was composed, arranged, orchestrated and conducted substantially in whole by Composer, Producer will accord credit to Composer on a separate card on all positive prints of the picture, on which no other credits shall appear. A copyright notice relating to music composed hereunder shall not constitute a credit for the purposes hereof.

3. Services: Employer agrees:

(a) To cause Composer to comply promptly and faithfully with all requirements directions and requests and with all rules and regulations made by Producer in connection with the conduct of its business; to perform and render services conscientiously and to the full limit of Composer's ability and as instructed by Producer in all matter including those involving artistic taste and judgment; and to perform and render such services during Composer's engagement hereunder whenever and wherever and as often as Producer may request or deem necessary or convenient; but there shall be no obligation on Producer to cause or allow Composer to perform any services hereunder or to actually utilize any of the results or proceeds of Composer's services, or to include all or any of Composer's music in the picture, or to produce, release or continue the distribution of the picture.

(b) That, without limiting the generality of the foregoing, Composer will render services hereunder in connection with musical compositions of Composer's own, as well as compositions furnished or designated by Producer, and will perform all services and duties customarily performed in the motion picture industry by a composer, scorer, conductor, arranger, orchestrator and adapter with respect to the picture and the trailer thereof; but Composer shall not be required to write any lyrics or literary material hereunder. Producer shall have the right to change the number and character of musical compositions, production numbers, special material, etc. required of Composer hereunder, and require Composer to write, compose and/or adapt other musical compositions, production numbers, special material, etc. in lieu thereof. Producer shall also have the right to require Composer to make such changes, modifications or additions to any and all musical compositions, production numbers or special material composed by Composer hereunder as may be required or desired by Producer, and Producer may require Composer to write and compose musical compositions, production numbers, special material, etc., in addition to those originally outlined by Producer to Composer. Producer may employ or engage other persons as composers, arrangers, orchestrators, copyists, adapters or conductors in connection with the picture at any time.

(c) That Composer will not utilize any material as the basis for any compositions or arrangements hereunder which is believed to be in the public domain without first notifying Producer of the identity of such material in order that Producer may verify the public domain status thereof; and that Composer will not use any material whatsoever not composed entirely by him (whether or not in the public domain) without first obtaining Producer's written consent or instructions.

(d) That, in the event Composer does not complete Composer's services in connection with the trailer of the picture during the term hereof, Employer agrees to cause Composer, after the termination hereof and at such time or times as may be designated by Producer, subject to the reasonable convenience of Composer, to return to the place designated by Producer for the purpose of writing and composing such musical compositions as may be required for such trailer, and Producer shall not be obligated to pay Employer any compensation for such services in addition to that elsewhere herein provided for.

(e) To cause Composer to deliver to Producer ~~Music Department~~ all original manuscripts, conductor's score, instrumental and vocal parts and other music of every kind prepared by or under the supervision of Composer hereunder and in Composer's or Employer's possession, or under their control. Composer will also perform all services required of Composer in connection with the preparation of the cue sheet of the picture

(f) To cause Composer, if requested by Producer, to render services as conductor of music recorded, written, arranged or orchestrated for the picture for phonograph record purposes, subject to his availability, without additional compensation; but Employer agrees that Composer will not render services for others as a conductor in connection with phonograph records containing such music during the period of 5 years from completion of the recording of the music sound track of the picture without first obtaining Producer's written consent. If any sound track phonograph records are released embodying the performance of Composer as a conductor hereunder, Producer will pay or cause to be paid to Employer a royalty at a royalty rate of 5% of 90% of the suggested retail list price computed and accounted for in accordance with the standard formula of Warner Bros. Records Inc.

4. Rights: All material written hereunder constitutes and will constitute a work specially ordered or commissioned by Producer for use as part of a motion picture or other audio-visual work, and accordingly, Producer, Employer and Composer expressly acknowledge and agree that said material is and shall be considered a "work made for hire" for Producer; and that Producer is and shall be considered the author and composer of said material for all purposes and the owner of all of the rights comprised in the copyright in and to said material and of any and all patents, trademarks and other rights thereto. Employer hereby grants to Producer all rights which it may have in and to all of said material as Composer's general employer. Employer and Composer will, upon request, execute, acknowledge and deliver to Producer such additional documents as Producer may deem necessary to evidence and effectuate Producer's rights hereunder, and hereby grant to Producer the right, as attorney-in-fact, to execute, acknowledge, deliver and record in the U.S. Copyright Office, or elsewhere, any and all such documents. Composer and Employer hereby covenant and agree not to make any claim or bring any suit or action which will or might interfere with or derogate from Producer's said rights.

Without limiting the generality of the foregoing, Employer and Composer expressly acknowledge that Producer is and will remain the owner of all now or hereafter existing rights of every kind and character whatsoever throughout the world, whether or not such rights are now known, recognized or contemplated, and the complete unconditional and unencumbered title throughout the world in and to:

Composer's services and performances pursuant to this agreement; any and all results and proceeds thereof; any and all sound records and mechanical and other reproductions containing the results and proceeds of such services; any and all music, lyrics and arrangements of public domain compositions (all herein called the "compositions") written, composed or created by Composer hereunder; any and all titles, incidents, dialogue, characters, action, gags, material, ideas, inventions and other literary material heretofore or hereafter written, composed, submitted, added, improvised, interpolated and invented by Composer in connection with the picture. Said rights include, without limitation, the complete, unencumbered, exclusive and perpetual right throughout the world to exhibit, record, reproduce, broadcast, televise, transmit, publish, copy, print, reprint, vend, sell, distribute, perform and use for any purpose, in any manner, and by any means, whether or not now known, invented, used or contemplated, and whether separately or in synchronism or timed relation with the picture or trailer clips or portions thereof, or any other motion picture, or otherwise, all or any part of the matters and things referred to in this paragraph 4 and to refrain from all or any part thereof. Producer may add lyrics in any language, and otherwise add to, subtract from, arrange, rearrange, revise and adapt all such material and the picture in any manner, and Composer hereby waives the "moral rights" of authors, as said term is commonly understood throughout the world.

Employer also hereby grants to Producer the right to issue and authorize publicity concerning Composer, and to use Composer's name and likeness and biographical data in connection with the distribution, exhibition, advertising and exploitation of the picture, the compositions and any and all sound recordings thereof.

5. Warranties: Employer represents and warrants that Employer is, and has been for more than 30 days prior to the date hereof, a corporation duly organized and existing under the laws of Employer's state or country of incorporation; that Employer is a bona fide corporate business entity established for a valid business purpose within the meaning of the tax laws of the United States and not a mere sham, conduit, or agent for Composer; that Composer is under an exclusive written contract of employment with Employer for a term extending at least until the completion of all services required of Composer hereunder, which contract gives Employer the right to loan or furnish the services of Composer to Producer as herein provided; that, if Employer was incorporated outside the United States of America, it is not engaged in any trade or business in the United States and does not have a "permanent establishment" in the United States, as this term is defined in the Tax Treaty between the United States and the country of incorporation; and that it does not have any agent in the United States who has, or habitually exercises, general authority to negotiate and conclude contracts on behalf of Employer. Employer further acknowledges that the foregoing representations and warranties will be relied upon by Producer for the purpose of determining whether or not it is necessary to make withholdings for United States Federal Taxes from moneys being paid to Employer hereunder, and Employer agrees that if withholdings are not made from said payments, and if thereafter it is determined that such withholdings were legally required, Employer and Composer will indemnify Producer against all loss, costs, damages and expenses relating thereto.

Employer further represents, warrants and agrees that it is free to enter into this agreement, and that Composer is not subject to any obligations or disability which will or might prevent him from or interfere with his fully keeping and performing all of the covenants and conditions to be kept and performed by him hereunder; that Composer has not made, and will not make, any grant or assignment which will or might conflict with or impair the complete enjoyment of the rights and privileges granted to Producer hereunder; that during the entire term hereof, during such period or periods as it may be lawful for Producer to require Composer so to do, Composer will, at his own expense, remain or become and remain a member in good standing of the properly designated labor organization or labor organizations, if any (as defined and determined under the applicable law), representing persons rendering services of the type and character that are required to be rendered by Composer hereunder; and that all music, lyrics, arrangements, titles, incidents, dialogue, characters, action, gags, material, ideas, inventions and other literary, dramatic and musical material referred to in paragraph 4 hereof (but not material assigned to Composer by Producer) shall be wholly original with Composer or shall be in the public domain throughout the world, and shall not infringe upon, or violate any copyright of, or the right of privacy of, any person; shall not constitute a libel or slander of any person, and shall not infringe upon or violate any other right of any person. Employer will indemnify Producer against, and save and hold Producer harmless of and from, all claims, demands, actions, liability, costs and expenses arising out of any breach or alleged breach of the foregoing representations and warranties.

6. Suspensions; etc: This agreement shall be deemed suspended without notice as to both services and compensation during all periods: (i) that Composer does not render services hereunder because of illness, incapacity, default, or similar matters beyond Producer's control; or (ii) that production of the picture is prevented or interrupted because of force majeure events (i.e., any labor dispute, fire, flood, adverse weather conditions, illness or incapacity of the director or any principal members of the cast, war or governmental action, or any other unexpected or disruptive event sufficient to excuse performance of this agreement as a matter of law). If any events referred to in (ii) above shall occur before the commencement of the employment hereunder, the starting date may be postponed for a period equivalent to the period that such events existed. Unless this agreement is terminated, the guaranteed period herein provided for, if any, shall be deemed extended for a period equivalent to all periods of suspension under this paragraph 6. If any matter referred to in (i) above, other than default, shall exist for 21 business days or more, or if any matter referred to in (ii) above shall exist for 8 weeks or more, or in the event of any refusal to perform or other material default on the part of Composer or Employer, Producer may terminate this agreement. If Employer does not receive compensation because of force majeure events for a consecutive period of longer than 8 weeks, Employer may terminate this agreement unless Employer's compensation is resumed within 2 business days after Employer gives Producer written notice requiring such resumption. Producer may investigate the nature and extent of any illness or incapacity suffered or asserted by Composer, and Composer will submit to reasonable medical examinations in connection therewith, and may have his own physician present at his own expense.

7. Assignment, etc: (a) Producer may assign this agreement and the right to require Composer to render services hereunder, and may loan Composer's services, to any parent, subsidiary or affiliated corporation of Producer, or to any corporation with or into which Producer may merge or consolidate, or to any person, firm or corporation succeeding to all or a substantial portion of Producer's assets used in connection with the production of motion pictures, or to any person, firm or corporation which may supply financing or studio facilities for the picture, or which may have the right to distribute the picture, or which may be or become the owner of the picture or of the underlying literary property and screenplay.

(b) Producer shall have the right to sell, transfer, assign, license, or otherwise dispose of, the picture and all or any part of its rights with respect to the picture and the advertising and exploitation thereof and all or any part of its rights in and to the compositions and the results and proceeds of Composer's services hereunder, and/or to use Composer's name, likeness and biographical data, and all of Composer's and Employer's representations and warranties hereunder, to any person, firm or corporation whatsoever, subject to (c) below.

(c) Notwithstanding the foregoing, Producer recognizes that Composer is a member of the performing rights society designated on the face hereof, and accordingly, in order to facilitate Composer's participation in certain revenue which may be derived from the compositions, Producer represents and warrants that it has

heretofore assigned the copyrights in and to the compositions to Warner Bros. Inc., a Delaware corporation, and that Warner Bros. Inc. has heretofore assigned said copyrights to the Publisher designated on the face hereof, and that it will require said Publisher to execute and deliver to Composer a Composer's Performing Rights and Royalty Agreement in the form of "Exhibit A" attached hereto and by this reference made a part hereof. Producer represents and warrants that said Publisher is a member of the same performing rights society as Composer.

(d) This agreement and all covenants, agreements, representations and warranties of Employer and Composer hereunder shall be binding upon Employer and Composer, and its and his executors, administrators, widow, widower, children, next of kin, heirs, successors, assigns and personal representatives.

8. Notices: Any rights of election herein granted to Producer or Employer may be exercised, unless herein otherwise specifically provided, by written notice. Any notice given by Producer to Employer or Composer may be given personally or to its or his duly authorized agent. Any notice which Producer is required or may desire to give shall be given by addressing the same to Employer at Employer's address shown on the face hereof, or at such other place as may be designated in writing by Employer, or at the address of Employer or Composer last known to Producer, or in the absence of any designated or known address, to Employer or Composer, c/o General Delivery, Los Angeles, California; and when same shall be deposited, so addressed, postage prepaid, in the United States mail and/or when Producer shall have delivered the same, so addressed, to a telegraph or cable company, toll prepaid, and/or when Producer shall have delivered the same to Employer or Composer personally, or to its or his duly authorized agent, Producer shall be deemed to have duly given such notice.

All notices which Employer is required or may desire to give to Producer hereunder shall be given by addressing the same to Producer at its address shown on the face hereof, attention Legal Department. Such notices shall be deemed duly given if given by mail, telegraph or cable in the manner hereinabove set forth.

9. Miscellaneous: Except as herein provided, this agreement cancels and supersedes all prior negotiations and understandings relating to the picture and contains all of the terms, covenants, conditions, representations and warranties of the parties hereto in the premises. Nothing herein contained shall be construed so as to require the commission of any act contrary to law and wherever there is any conflict between any provision of this agreement and any present or future statute, law, ordinance or regulation, the latter shall prevail, but in such event the provision of this agreement affected shall be curtailed and limited only to the extent necessary to bring it within legal requirements. Without limiting the generality of the foregoing, in the event any compensation or other moneys payable hereunder shall be in excess of the amount permitted by any such statute, law, ordinance or regulation, payment of the maximum amount allowed thereby shall constitute full compliance by Producer with the payment requirements of this agreement.